
2013 Summer Board Conference



Ethics for Board Members

Presented by:

Morgan Smith, Attorney



ETHICS FOR BOARD MEMBERS

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Oregon School Boards Association



AGENDA

- POLICY
- CONFLICTS OF INTEREST
- NEPOTISM
- FINANCIAL GAIN/DETRIMENT
- GIFTS
- CONSEQUENCES OF A VIOLATION



Policy

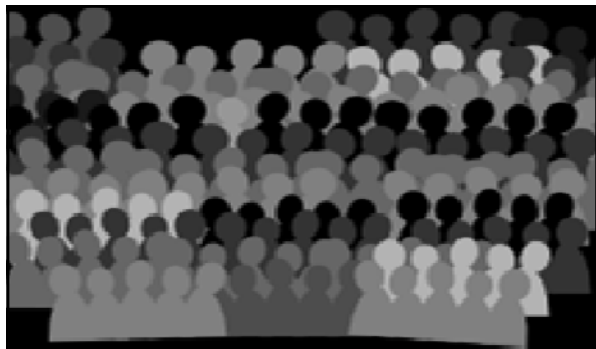
ORS 244.010(1)

“The Legislative Assembly declares that service as a public official is a public trust and that, as one safeguard for that trust, the people require all public officials to comply with [government ethics laws].”



Purpose

- **TRANSPARENCY:** Not designed to prevent “conflicts of interest”, but instead require disclosure of conflicts for the benefit of members of the public body and the public.
- **NO USE OF OFFICE FOR FINANCIAL GAIN:** Prohibits gifts and financial gain except in limited circumstances.



Anyone who is serving the school district will be affected by these ethics laws whether or not they are paid.



Conflict of Interest

Potential Conflict

Public official takes official action that **could** financially impact him/her, a relative or a business involving the public official or relative.

Actual Conflict

Public official takes official action that **would** financially impact him/her, a relative or a business involving the public official or a relative.



Examples of Potential Conflicts

- Board is discussing whether to send out an invitation to bid on a construction project. Board member owns construction company that will submit a bid if an invitation to bid is sent out.
- Board is discussing whether to authorize the superintendent to purchase new buses. Board member owns bus company where superintendent may purchase buses.



Examples of Actual Conflicts

- Board member votes to buy cars from car dealership that board member's relative owns.
- Board member votes to hire his wife as the District's superintendent.
- Board member votes to award construction bid to construction company owned by the board member.



Action Required



- **Potential** Conflict
 - Publicly announce a potential conflict of interest before participating in any action on the issue giving rise to the conflict of interest.
 - Following the public announcement, the public official may participate in official action on the issue.
 - This announcement **MUST** be reflected in the board minutes.



Action Required (cont'd)



- **Actual** Conflict
 - Publicly announce an actual conflict of interest regarding the issue giving rise to the conflict of interest.
 - You must then abstain from voting, discussing or taking official action that *will* result in financial gain or detriment to the public official or a relative.



Action Required (cont'd)

- **Actual** Conflict, Exception:
 - ◆ If public official's vote is necessary to meet minimum number of votes, the public official may vote in limited circumstances.
 - ◆ Must still make the required announcement and refrain from any discussion.
 - ◆ Does not apply when vote is needed due to a board member's absence.



Examples

- 5 member board, everyone is present, 1 board member declares an actual conflict. The board is tied 2-2. Board member with actual conflict can vote.
- 5 member board, 2 people are absent because they are sick. 3 people needed for a quorum. Board member with actual conflict cannot vote.
- 5 member board, only 3 current board members, 2 vacancies on board. Board member with actual conflict can vote.



Action Required (cont'd)

- “Public Employees” are required to notify their supervisors of a “conflict of interest” allowing the supervisor to evaluate whether to take the decision out of the employee’s hands and turn the responsibility over to another.



Who is a Relative?

- A **“relative”** means
- ◆ Spouse or domestic partner
 - ◆ Children
 - ◆ Siblings & their spouses
 - ◆ Parents & parents-in-laws
 - ◆ Any individual for whom the public official has a legal support obligation or who receives the public officials employment benefits (i.e. health insurance)
- Applies to public officials AND candidates





Nepotism Provisions



No participation in employment decisions including:

- ◆ Interview
- ◆ Debate
- ◆ Discussion



May serve as a reference or provide a recommendation.



May participate when hiring volunteers (except board members)



Nepotism (cont'd)

■ Class exception to nepotism rule:

- ◆ Not conflict of interest if the action would affect to the same degree a class including the Board member's relative or household member



Example

- Board member participates in collective bargaining team.
- Board member's relative is a District employee covered by the collective bargaining agreement.
- Board action regarding the collective bargaining agreement will have a financial impact on Board member's family member.
- Board member may participate because decision will impact a large class of individuals, not just Board member's relative.



Nepotism (cont'd)

- Public official may not directly supervise relative or household member.
- Public official may directly supervise relative if relative is an unpaid volunteer.
- A district may adopt policies specifying when a public official acting in an official capacity may directly supervise a person who is a relative or household member.



"But For" Test

Rule:

Public official shall not use official position to obtain financial gain or avoid financial detriment that would not otherwise be available BUT FOR the public official's position. (ORS 244.040)



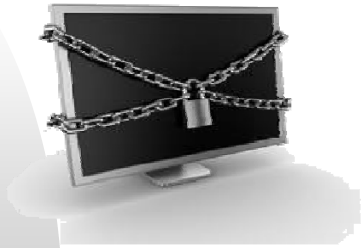
Financial Gain

- Cannot use position for financial gain or benefit
- Avoidance of detriment is a gain
- Benefit otherwise unavailable to the public
- Common sense





Use of Equipment Prohibited





Prohibited Financial Gain

- Frequent flyer miles
- Credit card points
- Discounts at retail stores
- Conference drawings/prizes
- Hotel points





NOT Financial Gain

- ◆ Anything included in the official compensation package
- ◆ Reimbursement of expenses
- ◆ Unsolicited awards
- ◆ Honorarium, \$50 or less



Gift Provisions

- Gift: Something of economic value given to a public official or a relative or household member of the public official:
 - ◆ (A) Without valuable consideration of equivalent value which is not extended to non-public officials on the same terms or conditions; or
 - ◆ (B) For valuable consideration less than that required from non-public officials



Gift Provisions (cont'd)

- Gift limit \$50 for those with legislative or administrative interest.
 - ◆ Limit applies to public official's relatives and household members.





Gift Provisions (cont'd)

- Legislative or administrative interest means an economic interest, distinct from that of the general public, in *any matter subject to the decision or vote of the public official acting in the capacity of a public official.*



Gift Provisions (cont'd)

- There is likely a legislative or administrative interest if
 - ◆ A business:
 - **Sells services or products to the district**
 - **Bids on a district's request for proposals**
 - ◆ An employee:
 - **Has an economic interest in the actions of their supervisor**



Gift Provisions (cont'd)

- Gifts among staff
 - ◆ Supervisor to Employee- OK
 - ◆ Employee to Supervisor- Not OK





Gift Definition Exclusions

- A gift is not:
 - Gifts received as part of usual or customary practice of person's private employment that bears no relationship to the person's public position



Gift Provisions

- Cannot accept entertainment gifts from those with legislative or administrative interest
- **Exception if “ceremonial” entertainment or “incidental” entertainment**
- **Can accept entertainment gifts up to \$50 limit**



Gift Provisions (cont'd)

- ◆ Gift limit applies when eating in the presence of the purchaser.





Gift Definition Exclusions

- A gift is not:
 - Reasonable expenses provided to public official/relative/staff when the public official is representing the public entity in various forums
 - Admission to or cost of food or beverage consumed when the public official represents the public entity
 - Food/beverage/entertainment at reception where it is an *incidental* part of the reception



Gift Definition Exclusions (cont'd)

- A gift is not:
 - Reasonable expenses paid to a public school employee for accompanying students on an educational trip



Statement of Economic Interest

- Annual Verified Statements of Economic Interest forms must be filed by Superintendents and District financial officers with GEC
- Board members do not need to file these
- Quarterly reports not required



Who Enforces Oregon's Ethics Laws?

The Oregon Government Ethics Commission (OGEC) was created in 1974 by a state-wide ballot measure in the shadow of the Watergate scandal. The set of ethics laws found in ORS Chapter 244 were created at the same time. The GEC is the administrative agency that enforces the government ethics laws in Oregon.



Who is Responsible for Compliance?

- Oregon Government Ethics law apply to the actions and conduct of *individual public officials* and *not the actions of state and local governing bodies or government agencies.*



\$ Fines \$

- Letters of reprimand.
- Civil penalties maximum of \$5,000 per violation.
- Financial gain realized subject to fine of twice the gain.



An Ounce of Prevention

- Telephone or email GEC:
 - 503-378-5105 or ogec.mail@state.or.us
- Research GEC website:
 - <http://www.oregon.gov/OGEC/>
- District's legal counsel
- OSBA legal department:
 - 1-800-578-6722